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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2012-85*

13 **BARBARA MARRON JOHNSTON**
2036 Brush Creek Drive
14 **Pittsburg, CA 94565**
15 **Registered Nurse License No. 740336**

A C C U S A T I O N

Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about November 21, 2008, the Board of Registered Nursing issued Registered
23 Nurse License Number 740336 to Barbara Marron Johnston (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought in this Accusation
25 and will expire on May 31, 2012, unless renewed.
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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

7. Section 118, subdivision (b), of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

8. Section 2761 of the Code states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

1 “(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
2 functions.”

3 9. Section 2762 of the Code states, in pertinent part:

4 “In addition to other acts constituting unprofessional conduct within the meaning of this
5 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
6 chapter to do any of the following:

7 “(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
8 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
9 administer to another, any controlled substance as defined in Division 10 (commencing with
10 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
11 defined in Section 4022.”

12 10. Code section 4060 provides, in pertinent part:

13 “No person shall possess any controlled substance, except that furnished to a person upon
14 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
15 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
16 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, [or] a
17 physician assistant pursuant to Section 3502.1 . . .”

18 11. Section 11173, of the Health and Safety Code provides, in pertinent part that:

19 “(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt
20 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
21 misrepresentation, or subterfuge; or (2) by concealment of a material fact.”

22 12. Section 11190, of the Health and Safety Code provides, in pertinent part that:

23 “(a) Every practitioner, other than a pharmacist, who prescribes or administers a controlled
24 substance classified in Schedule II shall make a record that, as to the transaction, shows all of the
25 following:

26 (1) The name and address of the patient.

27 (2) The date.

1 (3) The character, including the name and strength, and quantity of controlled substances
2 involved.”

3 13. Section 11192, of the Health and Safety Code provides, in pertinent part that:

4 “In a prosecution for a violation of Section 11190, proof that a defendant received or has
5 had in his possession at any time a greater amount of controlled substances than is accounted for
6 by any record required by law or that the amount of controlled substances possessed by a
7 defendant is a lesser amount than is accounted for by any record required by law is prima facie
8 evidence of a violation of the section.”

9 14. Section 11350, subdivision (a)(2), of the Health and Safety Code, provides that is
10 unlawful for any person to possess any controlled substance classified as a Schedule II, IV, or V,
11 which is a narcotic drug, without the written prescription of a physician.

12 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

13 15. Code section 4021 states:

14 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
15 11053) of Division 10 of the Health and Safety Code.”

16 16. Code section 4022 provides:

17 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
18 humans or animals, and includes the following:

19 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
20 prescription,’ ‘Rx only’ or words of similar import.

21 “(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale
22 by or on the order of a _____,’ ‘Rx only,’ or words of similar import . . .

23 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
24 prescription or furnished pursuant to Section 4006.”

25 17. “Demerol” is a trade name for Pethedine or Meperidine, is classified as a Schedule II
26 controlled substance pursuant to Health and Safety Code section 11055, subdivision (c)(17), and
27 is a dangerous drug as defined by Code section 4022. Demerol can produce drug dependence of
28 the Morphine type and therefore has the potential for being abused. Psychic dependence,

1 physical dependence, and tolerance may develop upon repeated administration of Demerol and it
2 should be prescribed and administered with the same degree of caution appropriate to the use of
3 Morphine.

4 18. "Dilaudid," also known by its trade name, Hydromorphone, is classified as a
5 Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision
6 (b)(1)(J), and a dangerous drug as defined by Code section 4022. It is indicated for the treatment
7 of moderate to severe pain.

8 COST RECOVERY

9 19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case.

13 FACTS

14 20. From on or about July 10, 2010, until on or about August 27, 2010, Respondent was
15 employed as a registered nurse by AMN Healthcare (AMN), a healthcare staffing agency, and
16 assigned to Sutter Delta Medical Center (SDMC) in Antioch, California. On or about September
17 2, 2010, Respondent was terminated from her employment with AMN. On or about September 2,
18 2010, the Board received a complaint alleging that Respondent was suspected of abusing drugs
19 when it was discovered that she pulled Demerol for a patient in the Emergency Room (ER) at
20 SDMC. According to the complaint, Demerol had not been used in SDMC's ER for over one
21 year. A subsequent chart investigation of Respondent revealed multiple instances where
22 Respondent withdrew large amounts of narcotics for use in patients that did not have a
23 physician's order for the narcotics. SDMC records also revealed that Respondent withdrew
24 narcotics for patients that were not assigned to her care. Furthermore, there were several
25 instances where Respondent failed to document administering or wasting the drugs she removed,
26 and failed to otherwise account for the drugs. The following are examples of Respondent's
27 narcotic discrepancies and inconsistencies as revealed by SDMC's records:

PATIENT A

a. On or about August 25, 2010, Respondent withdrew from the Pyxis 100 milligrams of Demerol for Patient A. Patient A did not have a physician's order for Demerol. Respondent did not document administering or wasting the Demerol, and she did not otherwise account for any of the Demerol that she removed for Patient A.

b. On or about August 25, 2010, Respondent withdrew from the Pyxis 4 milligrams of Dilaudid for Patient A. Patient A did not a physician's order for Dilaudid. Respondent did not document administering or wasting the Dilaudid, and she did not otherwise account for any of the Dilaudid that she removed for Patient A. Patient A was 98 years old.

PATIENT B

c. On or about August 26, 2010, Respondent withdrew from the Pyxis 100 milligrams of Demerol for Patient B. Patient B did not have a physician's order for Demerol. Respondent failed to document administering or wasting the Demerol, and she did not otherwise account for any of the Demerol that she removed for Patient B. Patient B was not assigned to Respondent's care.

d. On or about August 26, 2010, Respondent withdrew from the Pyxis 4 milligrams of Dilaudid for Patient B. Patient B did not a physician's order for Dilaudid. Respondent did not document administering or wasting the Dilaudid, and she did not otherwise account for any of the Dilaudid that she removed for Patient B. Patient B was not assigned to Respondent's care.

PATIENT C

e. On or about August 12, 2010, Respondent withdrew from the Pyxis 4 milligrams of Dilaudid for Patient C. Patient C did not have a physician's order for Dilaudid. Respondent did not document administering or wasting the Dilaudid, and she did not otherwise account for any of the Dilaudid that she removed for Patient C.

PATIENT D

f. On or about July 10, 2010, Respondent withdrew from the Pyxis a total of 12 milligrams of Dilaudid for Patient D. Respondent conducted three separate Pyxis transactions and removed 4 milligrams of Dilaudid with each transaction. Respondent documented in Patient

1 D's medical record that she administered 1 milligram of Dilaudid to Patient D. Respondent did
2 not document wasting any of the Dilaudid, and she failed to account for the remaining 11
3 milligrams of Dilaudid that she removed.

4 **PATIENT E**

5 g. On or about August 27, 2010, Respondent withdrew from the Pyxis 8 milligrams of
6 Dilaudid for Patient E. Respondent did not document administering or wasting the Dilaudid, and
7 she did not otherwise account for any of the Dilaudid that she removed. Patient E was not
8 assigned to Respondent's care.

9 **PATIENT F**

10 h. On or about August 26, 2010, Respondent withdrew from the Pyxis 100 milligrams of
11 Demerol for Patient F. Patient F did not have a physician's order for Demerol. Respondent failed
12 to document administering or wasting the Demerol, and she did not otherwise account for any of
13 the Demerol that she removed for Patient F. Patient F was 13 years old and was not assigned to
14 Respondent's care.

15 **PATIENT G**

16 i. On or about August 27, 2010, Respondent withdrew from the Pyxis 4 milligrams of
17 Dilaudid for Patient G. Patient G did not have a physician's order for Demerol. Respondent
18 failed to document administering or wasting the Dilaudid, and she did not otherwise account for
19 any of the Dilaudid that she removed for Patient G. Patient G was 7 months old and was not
20 assigned to Respondent's care.

21 j. On or about August 27, 2010, Respondent withdrew from the Pyxis 100 milligrams of
22 Demerol for Patient G. Patient G did not have a physician's order for Demerol. Respondent
23 failed to document administering or wasting the Demerol, and she did not otherwise account for
24 any of the Demerol that she removed for Patient G. Patient G was 7 months old and was not
25 assigned to Respondent's care.

26 **PATIENT H**

27 k. On or about August 26, 2010, Respondent withdrew from the Pyxis 100 milligrams of
28 Demerol for Patient H. Patient H did not have a physician's order for Demerol. Respondent

1 failed to document administering or wasting the Demerol, and she did not otherwise account for
2 any of the Demerol that she removed for Patient H. Patient H was not assigned to Respondent's
3 care.

4 FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Obtaining or Possessing Controlled Substances)
5 (Bus. & Prof. Code §§ 2761, subd. (a), 2762, subd. (a), 4060)

6 21. Complainant realleges the allegations contained in paragraph 20 and each of its
7 subparts above, and incorporates them as if fully set forth here.

8 22. Respondent has subjected her registered nurse license to disciplinary action under
9 Code section 2761, subdivision (a), as defined by Code section 2762, subdivision (a), in that she
10 unlawfully obtained controlled substances in violation of Code section 4060, as described in
11 paragraph 20 and each of its subparts. The circumstances are as follows:

12 a. Respondent unlawfully obtained and possessed Demerol and Dilaudid in
13 violation of Code section 4060.

14 b. Respondent unlawfully obtained Demerol and Dilaudid by fraud, deceit,
15 misrepresentation, subterfuge and/or by the concealment of a material fact, in violation of Health
16 and Safety Code section 11173, subdivision (a).

17 c. Respondent unlawfully obtained Demerol and Dilaudid without the written
18 prescription of a physician, in violation of Health and Safety Code section 11350, subdivision
19 (a)(2).

20 d. Respondent failed to make the proper record for Demerol and Dilaudid,
21 Schedule II controlled substances, in violation of Health and Safety Code section 11190,
22 subdivision (a):.

1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Gross Negligence and/or Incompetence in the Practice of Nursing)
3 (Bus. & Prof. Code § 2761, subd. (a)(1))

4 23. Complainant realleges the allegations contained in paragraphs 20 through 22 and each
5 of their subparts above, and incorporates them as if fully set forth here.

6 24. Respondent has subjected her registered nurse license to disciplinary action under
7 Code section 2761, subdivision (a)(1), in that she was grossly negligent or incompetent, or both,
8 in her nursing practice. The circumstances of Respondent's negligence or incompetence, or both
9 are set forth in paragraphs 20 through 22 and their subparts, above.

10 DISCIPLINARY CONSIDERATIONS

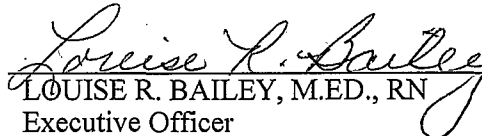
11 25. To determine the degree of discipline, if any, to be imposed on Respondent,
12 Complainant alleges that on or about February 23, 2000, in a disciplinary action before the State
13 of Florida Board of Nursing (Florida Board), Case Number 99-04811, the Florida Board entered a
14 Final Order accepting Respondent's voluntary relinquishment of her Florida registered nurse
15 license. Upon receipt of a uniform complaint from the Intervention Project for Nurses, the
16 Florida Board initiated an investigation to determine whether disciplinary action against
17 Respondent was warranted. According the Investigative Report in this case, which was accepted
18 into the Florida Board's Final Order as its findings of fact, Respondent was dismissed from an
19 Intervention Project for Nurses due to her non-compliance. Respondent admitted to possession,
20 use, and diversion of controlled substances from her former place of employment at Emerald
21 Oaks in Sarasota, Florida. Respondent was notified of the Florida Board's investigation by a
22 letter dated September 9, 1999. On or about October 21, 1999, Respondent filed a "Voluntary
23 Relinquishment of License" with the Florida Board in order to avoid the necessity of further
24 administrative proceedings.
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 740336, issued to Barbara Marron Johnston;
2. Ordering Barbara Marron Johnston to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: August 9, 2011


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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